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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,371	06/22/2000	John D. Nelson	101992-200	8796

27267 7590 03/08/2006

WIGGIN AND DANA LLP  
ATTENTION: PATENT DOCKETING  
ONE CENTURY TOWER, P.O. BOX 1832  
NEW HAVEN, CT 06508-1832

EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/599,371

**Applicant(s)**

NELSON ET AL.

**Examiner**

NEIL LEVY

**Art Unit**

1615

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 10, 11, 33, 34, 43-45, 48, 50, 52, 54, 56 and 57 is/are pending in the application.
- 4a) Of the above claim(s) 44 and 54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 10, 11, 33, 34, 43, 45, 48, 50, 52, 56 and 57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/17/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 44 & 54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/19/01. At that time , applicant elected zinc.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

Claims 45,56 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. "strong chelating agent" is undefined, thus applicant's arguments of 12/30/05 remain unpersuasive

### ***Claim Rejections - 35 USC § 102***

Claim1, 11, 33, 34, 43, 45, 48, 50, 52, 56-57 stand- rejected under 35 U.S.C.

102(a and e) as being anticipated Kaufman et al 6-17562

We give no patentable weight to the future intended use of the claimed composition as a dilution with enhanced effects.

.Claim 1, 11, 48 stand rejected under 35 U.S.C. 102(b) as being Dixon et al EP 077630

Here, too, is the instant composition, the open language permitting of additional ingredients, inclusive of the undefined "strong" chelating agent.

.Claims 1, 10, 11, 45, 46 stand rejected under 35 U.S.C. 102(b) as being anticipated by Nagata- JP 134227

See p. 7, 0.01-10% zinc oxide/0.005-5%ZPT, within the instant Concentrations & dilution ranges.

Claims 1, 10, 11, 33, 34, 43, 48, 50, 52, 57 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wiese et al 5227156.

The rejection of record is maintained. All the components within the instant ranges are present; Col. 3 shows 0.1-2% ZPT & 0.001-1% zinc salts- thus within the 1/300-50/1 & the 1:10- 1: 100 IF Diluted, as for instance in the use of water while applying the shampoo, or if one were to desire a dilution, of the 2/1 to .2/.1 as at claim 1.

Claims 1, 10-11, 33, 34, 43, 48, 50, 52, 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kappock et al 5518774.

The rejection of record is maintained. Dilution, Concentration being obvious to

the artisan. See col. 3, lines 22-49 for concentrations, & col. 7, top for dilution. The open instant language is met by Kappock, providing ZPT & zinc oxide at the instant ratios & dilutions with protection against microbes. Summary shows aqueous compositions ((1a)-water).

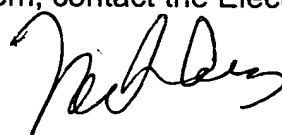
Applicant's arguments filed 12/30/05 have been fully considered but they are not persuasive. Applicant's arguments have been considered & addressed in the rejections maintained, & where persuasive, rejections withdrawn. We note that claim 54 still shows "concentrate". Although silver was previously rejected, it was found incidentally in the zinc search.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY  
Primary Examiner  
Art Unit 1615

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Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 1,10,11,33,34,43-45,48,50,52,54,56 and 57.